

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

In re:

Donald Pope

Debtor

Case No.10-77242-swr

Chapter 13

Honorable Steven W Rhodes

Donald Pope

Plaintiff

Adv. Proc. No.10- -swr

v.

Bank of America

Defendant

**COMPLAINT TO AVOID SECURITY INTEREST IN REAL PROPERTY
LOCATED AT 86 LAKEVIEW DRIVE, WHITMORE LAKE MI 48189**

Debtor, by and through his attorneys, Marrs & Terry, PLLC, now comes and states the following complaint:

1. Plaintiff brings this complaint pursuant to 11 U.S.C. §506, and submits herself to jurisdiction of this Court through Fed. R. Bankr. P §7001 and §7004.
2. Debtor filed a Voluntary Chapter 13 petition with this court on December 13, 2010.
3. The Debtor has two separate mortgages on his principle residence located at 891 Primrose, Milan MI 48160 located in Washtenaw County and more particularly described as.

City of Milan, County of Washtenaw, State of Michigan:

Unit 153, MEADOWBROOK CONDOMINIUM, according to the recorded

Master Deed thereof, Liber 4310, Page 153, Washtenaw County Records.

Tax Id: 19-19-35-280-153

4. The first mortgage is held by IBM, Lender Business Process Services, and has an outstanding balance of \$151,349.00 according to the stated balance on the Debtor's credit report at the time of filing. Said first mortgage is recorded at the Washtenaw County Register of Deeds in Liber 4621 Page 526. The second mortgage is held by

Bank of America and has a balance of \$36,495.00 according to the Debtor's credit report. Said second mortgage is recorded at the Washtenaw County Register of Deeds in Liber 4621 Page 527.

5. The property has a current value of \$120,000.00 according to Debtor's schedules and a current market analysis and review of the SEV.
6. In order for Defendant's mortgage to be secured by even \$1, the property would have to be of value in excess of the first mortgage and any outstanding property taxes, which is no less than \$151,349.00.
7. Debtor is entitled to avoid the claimed security interest of Bank of America as to the second mortgage on the Debtor's property under the provisions of 11 U.S.C. §506, as the Defendant's second mortgage lien is not an "allowed secured claim" as defined by the Code and applicable case law.
8. As such, the Defendant does not have a valid lien or security interest as to the second mortgage on the property at 891 Primrose, Milan MI 48160, and should therefore be treated as a general unsecured creditor whose claim will be paid as a Class 8 creditor.
9. The interests of good faith and justice support the requested relief.

WHEREFORE, Debtor requests that this Honorable court grant the requested relief to avoid Bank of America's security interest and lien in the real estate located at 891 Primrose, Milan MI 48160 as it relates to the mortgage recorded at Liber 4621, Page 527, Washtenaw County Records.

Respectfully Submitted,

Dated: December 14, 2010

____/s/Tricia Stewart Terry____
TRICIA STEWART TERRY (P59522)
Marrs & Terry, PLLC
6553 Jackson Rd
Ann Arbor MI 48103
734-663-0555
TTerry3272@aol.com